

Chapter 4

Communications

One of the most important aspects of any campaign is communicating with the voters. The Political Reform Act does not regulate the **truth or accuracy** of political communications, but does require reporting of most payments in connection with flyers, mailers, billboards, and radio and television advertising. Identification rules also may apply. This chapter reviews common communications undertaken in a campaign and how payments for the communications are required to be reported. Identification requirements on mailings, telephone calls, and other advertisements are also summarized. When reviewing this chapter, it is important to remember that certain communications and advertisements trigger mandatory disclosures.

Contributions and Independent Expenditures

Generally speaking, when someone other than the primarily formed ballot measure committee pays for a communication supporting the committee's position on the measure, the committee has received a nonmonetary contribution unless the payment was not "made at the behest of" the committee. Payments for communications that support or oppose a ballot measure by the use of express advocacy, which are not made at the behest of the ballot measure committee primarily formed to support or oppose the ballot measure, are called "independent expenditures." In these cases, the primarily formed ballot measure committee whose position is being supported is not required to report the payments, although the person making them may have reporting obligations. In addition, payments for certain other types of communications may not be reportable at all, or may be subject to special reporting requirements.

(See Chapter 8, and the definition of "contribution" in Appendix 1.)

Whether a communication is a contribution, an independent expenditure, or some other type of reportable payment depends on several factors, including whether the communication "expressly advocates" the passage or defeat of a clearly-identified ballot measure. The information and examples provided below may be of assistance in making that determination. However, it is impossible to address all of the types of communications in a campaign. If presented with a specific example, FPPC staff can provide assistance.

Express Advocacy

A communication *expressly advocates* support or opposition when it uses words such as "vote for," "elect," "support," "cast your ballot," "vote against," "defeat," "reject," "sign petitions for," or the communication, taken as a whole, unambiguously urges a particular result in an election.

Clearly Identifies

A communication *clearly identifies* a ballot measure when the measure's name, popular title, or official title is used.

Example *An individual paid \$4,000 for a newspaper ad stating "Vote for Measure A." The communication expressly advocates support for a clearly-identified ballot measure and must be reported either as a contribution or independent expenditure, depending upon whether it was made at the behest of a primarily formed ballot measure committee.*

Later, the same individual paid \$2,000 for post card-sized flyers that simply stated, "Vote on Election Day." This communication

is not reported as a contribution or independent expenditure because it did not expressly advocate support of or opposition to a measure.

A communication that expressly advocates support of or opposition to a clearly-identified ballot measure is a contribution, if made at the behest of the committee, or an independent expenditure, if *not made* at the behest of the committee. In addition, when an officeholder or candidate controls a primarily formed ballot measure committee, payments made at the behest of the officeholder or candidate are contributions to the committee.

Made at the Behest

A payment is “*made at the behest*” of a primarily formed ballot measure committee if the payment is made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express prior consent of the committee or an agent of the committee, and the arrangement occurs prior to the making of the communication.

Expenditures made at the behest of a committee include expenditures made by a person, other than the committee, to pay for a communication relating to one or more ballot measures if it is created, produced, or disseminated:

- After the committee has made or participated in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication; or
- After discussion and agreement between the committee and the creator, producer or distributor of a communication, or the person paying for that communication, regarding the content, timing, location, mode, intended audience, volume of

distribution, or frequency of placement of the communication.

An expenditure is presumed to be made at the behest of a committee if it is:

- Based on information about the committee’s campaign needs or plans provided to the expending person by the committee; or
- Made by or through any agent of the committee in the course of the agent’s involvement in the current campaign; or
- For a communication relating to a clearly-identified ballot measure when:
 - The person making the expenditure retains the services of a person who provides the committee supporting or opposing the ballot measure with professional services related to campaign or fundraising strategy for the same election, or
 - The communication replicates, reproduces, republishes, or disseminates, in whole or in substantial part, a communication designed, produced, paid for, or distributed by the committee.

An expenditure is **not made at the behest** of a committee just because:

- A person interviews the committee or committee’s agent on issues affecting the person making the expenditure; or
- The person making the expenditure obtains a photograph, biography, position paper, or press release, or similar material is provided by the committee or committee’s agent; or
- The person making the expenditure has made a contribution to the committee; or
- A person makes an expenditure in response to a general, nonspecific request for support by a committee, provided that there is no discussion with the committee

prior to the expenditure relating to details of the expenditure; or

- The person making the expenditure has invited the committee to make a public appearance before the person's members, employees, shareholders, or their families provided that there is no discussion with the committee prior to the expenditure relating to details of the expenditure; or
- A person informs a committee that the person has made an expenditure, provided that there is no exchange of information, not otherwise available to the public, relating to details of the expenditure; or
- The expenditure is made at the request or suggestion of the committee for the benefit of another committee; or
- The committee has exchanged information with other committees that are primarily formed to support or oppose the same measure or measures.

Example *A business entity printed campaign literature stating, "Vote for Measure B." The communication included reasons why voters should vote for the measure. The business entity did not prepare the literature with assistance from the committee primarily formed to support Measure B. The business entity made an independent expenditure, not a contribution to the Measure B committee.*

On the other hand, if the business entity contacted the Measure B committee and arranged for the committee's staff to help draft and design the literature, the business entity would have made a nonmonetary contribution to the committee primarily formed to support Measure B.

Determination Based on Facts

As the previous examples illustrate, whether a communication is deemed to be express advocacy, and whether the communication is

made at the behest of the committee, are factual determinations based on the text of the communication and the circumstances associated with it. Although determinations must be made on the facts of each particular situation, the following examples address common situations that may arise in a campaign.

Reporting

There are distinctly different reporting requirements for contributions and independent expenditures.

When a person or group of persons makes expenditures for a communication at the behest of a committee, the committee **must report** the receipt of a nonmonetary contribution. The person making the expenditure may also have to file reports.

Committees that are the beneficiaries of independent expenditures do not report them. However, the person making the expenditures may have filing obligations.

Endorsements

An endorsement of a measure may become a contribution or an independent expenditure when a payment is made in connection with the endorsement.

Example *The president of a police officers' association announces at its annual meeting that the association endorses county Measure Y. Merely making an oral endorsement is not a contribution or independent expenditure to the committee supporting Measure Y.*

Closer to the election, in coordination with the committee formed to support Measure Y, the association mails a special flyer to the voters announcing its endorsement. The association has now made a nonmonetary contribution to the committee.

If a candidate pays for a communication supporting his or her own candidacy and also supporting or opposing a ballot measure, the payment is not a contribution to the ballot measure committee nor is it an independent expenditure.

Communications Identifying State Candidates

If a ballot measure committee makes a payment or a promise of a payment totaling \$50,000 or more for a communication that clearly identifies a candidate for elective state office, but does not expressly advocate the election or defeat of the candidate, and the communication is disseminated within 45 days of an election in which the identified candidate will appear on the ballot, and the communication is made at the behest of the candidate, the ballot measure committee is subject to contribution limits. Once a committee receives a contribution in excess of the applicable contribution limit, the committee may not make a payment for such a communication. (See Chapter 3 for further information.)

In addition the committee is required to file Form E-530 (See Chapter 8).

Example *Two weeks before a 2008 election in which Assembly member Caterina Ramos will be listed on the ballot, the committee primarily formed to support Proposition 155 pays more than \$50,000 for a billboard ad. If the ad does not advocate her election, but does include her name and image and was approved by her, the measure committee is subject to a contribution limit of \$30,200 in a calendar year from a single source.*

Non-Contributions

Debates

A payment for a debate or other forum to which the proponent of a ballot measure and

at least one opponent, or their respective representatives, were invited to participate in equal numbers is not a contribution to the ballot measure committees.

Example *The League of Women Voters invited the proponent and an opponent of Proposition 310 to speak at a forum. Only the proponent attended. Because both sides of the ballot measure were invited, the cost of the meeting is not a contribution to the committee established to support the measure.*

Meetings

A payment made by a bona fide service, social, business, trade, union, or professional organization for reasonable overhead expenses associated with a regularly-scheduled meeting at which an individual representing either side of a ballot measure speaks is not a contribution, if the organization pays no additional costs in connection with the speaker's attendance.

Example *At a union's regularly-scheduled monthly meeting, a representative for the proponent of Proposition 310 was invited to solicit votes. The union did not incur any additional costs in connection with the speaker's presentation and, thus, no contribution was made.*

Member Communications

Payments made by an organization or its sponsored committee for a communication that supports or opposes a ballot measure are not contributions or expenditures as long as the communication is made only to the organization's members, employees, or shareholders, or the families of its members, employees, or shareholders. The payments may not be for general public advertising, such as billboards, newspaper ads, or radio or television ads. If made by the organization's sponsored committee, the

committee would report the payments as being made for general member communications.

Example *Your campaign consultant asks a labor organization to send a mailing to only labor union members supporting your committee's position on a ballot measure. The mailing is not a contribution to your committee. Later, the campaign consultant asks the organization to send the mailing to all registered voters in the district where the measure will appear on the ballot. The mailing to the voters is a contribution to your committee.*

Payments made by a political party for a communication that supports or opposes a ballot measure are not contributions as long as the communication is distributed only to the party's members, employees, and families of its members and employees. However, the party must report the payments as if they were contributions or independent expenditures.

News Stories

A payment for the cost of publishing or broadcasting a news story, commentary, or editorial is not a contribution when the payment is made by a federally-regulated broadcast outlet or a regularly-published newspaper, magazine, or other periodical of general circulation that routinely carries news, articles, and commentary of general interest.

Identification Requirements for Mailings

Mass Mailings

A "mass mailing" is more than 200 similar pieces of mail sent in a single calendar month. The Political Reform Act contains sender

identification requirements for mass mailings that are "mailed" (e.g., USPS, FedEx) to a person's home, business, or post office box.

Solicitation letters, notices of fundraising events, newsletters sent by the committee, and other types of campaign literature are common types of mass mailings.

The Political Reform Act does not regulate the **truth or accuracy** of mail or other campaign-related advertisements or materials.

Sender Identification Requirements

Sent by One Committee

The name of the committee and its street address, city, state, and zip code must be placed on the outside of each piece of mail in no less than 6-point type and in a color or print that contrasts with the background so that it is easily read. A post office box may be used as the address only if the committee's street address is on its Statement of Organization (Form 410) on file with the Secretary of State.

Sent by Two or More Committees

The name and address of the committee that is paying the greatest share of the mass mailing, including costs for designing, postage, and printing, must be placed on the outside of each piece of mail as described above. If two or more committees pay equally for the mailer, the name and address of at least one of the committees must be shown on the outside as described above, and the

Sender Identification

Yes on Measure A Committee
10 Parkway Plaza
Playa del Sol, CA 95888



Sharon Eshenaur
620 McFadden Street
Playa del Sol, CA 95888

names and addresses of all committees must appear on at least one insert.

Required Recordkeeping

For each mass mailing, the following must be retained for a period of four years:

- A sample of the mailing;
- A record of the date sent;
- The number of pieces sent; and
- The method of postage used.

Answering Your Questions

- Q. *Must the committee's identification number appear on a mailing?*
- A. No.
- Q. *If an organization includes a copy of a committee's flyer in its regularly published newsletter, is the committee required to be identified on the outside of the mailer?*
- A. No. The committee's name and address must be identified on the flyer only.
- Q. *A committee has more than one address. Which address must be used on mass mailings?*
- A. Any address that appears on the committee's Statement of Organization (Form 410) on file with the Secretary of State may be used.
- Q. *A committee pays for a ballot measure committee's mailing as a nonmonetary contribution. Which committee must be identified on the outside, the committee paying for the mailing or the ballot measure committee?*
- A. Only the committee that pays for the mailing is required to be identified on the outside of the mailing.
- Q. *Where on the outside of the mailing does the committee identification need to be placed?*

- A. There is no specific requirement for location of the identification, as long as it appears somewhere on the outside of the mailing.
- Q. *If a committee sends over 200 emails supporting a ballot measure, are there any identification requirements?*
- A. No. The mass mailing identification requirements apply only to items sent through the mail (e.g. USPS, FedEx).

Slate Mailer Disclaimer and Identification Requirements

A slate mailer is a mass mailing that supports or opposes four or more candidates or ballot measures. A ballot measure committee may be subject to slate mailer disclaimer and identification requirements if it:

- Is involved in the production of one or more slate mailers and exercises control over the selection of candidates and measures to be supported or opposed in the slate mailers; and
- Receives or is promised payments that total \$500 or more in a calendar year for the production of one or more slate mailers.

For more information on slate mailer disclaimer and identification requirements, contact the FPPC.

Identification Requirements for Telephone Calls

If a committee pays for 500 or more similar telephone calls supporting or opposing the measure the committee is formed to support/oppose, the name of the committee must be disclosed to the recipients of the calls. Committees are prohibited from contracting with any phone bank vendor that does not disclose the required information. The committee must maintain a record of the

script of the call or, for recorded messages, a copy of the recording, for four years. These requirements do not apply to calls made by a candidate who controls the committee, the campaign manager, or individuals who are volunteers.

Telephone calls also may be subject to the advertisement identification requirements discussed below.

Ballot Measure Advertisement Identification

This section reviews those types of “advertisements” for which the Political Reform Act requires additional disclosure. State and local primarily formed ballot measure committees must include a disclosure statement on advertisements supporting or opposing a ballot measure if the committee has received \$50,000 or more in cumulative contributions from a single source. In addition, there are specific disclosure and reporting requirements if any primarily formed ballot measure committee makes a payment of \$5,000 or more for a person to appear in an advertisement.

Note: See Chapter 1 for committee name requirements prior to review of this section.

In addition, a primarily formed ballot measure committee is prohibited from creating or using a noncandidate controlled committee or a nonsponsored committee to avoid the disclosure of any individual, industry, business entity or controlled committee or sponsored committee as a major funding source.

Definition of “Advertisement”

The term “advertisement” means any general or public advertisement for the purpose of supporting or opposing a ballot measure(s). An advertisement includes, but is not limited to, the following:

- Television or radio programming;

- Newspaper, magazine, or periodical communication;
- Telephone or fax messages to 200 or more households not solicited by the recipients;
- Direct mailing to 200 or more households not solicited by the recipients;
- Posters, door hangers, and yard signs of which 200 or more are produced;
- A billboard; and
- Campaign buttons that are 10 inches in diameter or larger, and bumper stickers that are 60 square inches or larger, of which 200 or more are produced.

An advertisement does not include a:

- communication from an organization other than a political party to its members;
- campaign button smaller than 10 inches in diameter;
- bumper sticker smaller than 60 square inches;
- small promotional item (e.g., pen, pin, etc.) upon which the disclosure requirements cannot be conveniently printed or displayed;
- piece of wearing apparel;
- skywriting display; or
- web-based or Internet-based communication (including email).

Advertisement Disclosure

A primarily formed ballot measure committee must print or broadcast its name on an advertisement or other paid public statement. (See Chapter 1 for committee name requirements.) The committee must also include a disclosure statement if the committee has received \$50,000 or more in cumulative contributions from a single source. The disclosure statement must identify the names of the two highest contributors. In the case of an

advertisement that is an electronic broadcast of 15 seconds or less or a print media advertisement which is 20 square inches or less, only the committee's name and the name of the highest contributor that has made a contribution of \$50,000 or more are required.

Determining Which Contributors to Identify

If there are more than two persons who have each contributed a cumulative amount of \$50,000 or more to the ballot measure committee, only the highest and second highest contributors must be identified.

In the event that more than two contributors meet this disclosure threshold and have contributed equally, the most recent of those contributors must be identified.

If the contributor is a recipient committee, the word "committee" must be included. For example, if the contributor was the political action committee of the California Water Rafter Association, the advertisement would identify the "California Water Rafter Association Committee."

Statement

The disclosure on the advertisement must include wording such as, "major funding by" or "paid for by," and must be presented in a clear and conspicuous manner to give the reader or listener adequate notice of the identity of the contributors. Broadcast information also must be appropriately conveyed to the hearing impaired.

Examples *A ballot measure committee received two contributions of \$50,000 or more. The committee will buy air time on local television stations. The television ads will be more than 15 seconds in duration, so must identify the committee name and the names of the two contributors that donated \$50,000 or more.*

If the committee purchases radio airtime for ads each 15 seconds or less in duration, the ads must identify the name of the committee and the highest contributor of \$50,000 or more.

Use of Languages Other than English in Advertisement Disclosures

The advertisement disclosure should be in the same language as the advertisement. Exceptions include: the name of the committee and the names of the major donors. For a committee whose name is "Californians for Clean Energy, A Committee for Proposition 320, with support from environmental interests and fuel cell companies," whose major contributors are the California Environment Political Action Committee and Clean Energy, Inc., the following example would be acceptable for advertisement disclosure:

"Pagado por el comité de Californians For Clean Energy, A Committee for Proposition 320, with support from environmental interests and fuel cell companies, la financiación mayor proporcionada por el comité de California Environment Political Action Committee y Clean Energy, Inc."

Specific Content Requirements

The required disclosure information must be:

Video: both displayed in writing and spoken either at the beginning or at the end of the communication. The written statement must be readily legible to an average viewer and be displayed for not less than four seconds. However, if the disclosure statement is displayed for at least five seconds of a broadcast of 30 seconds or less or 10 seconds of a 60 second broadcast, a spoken disclosure statement is not required.

Audio: spoken in a clearly audible manner at the beginning or end of the communication and must last at least three seconds.

Print Media: printed clearly and legibly in type no less than 10 points in size and in a contrasting color to the background on which it appears. If a single print media advertisement consists of multiple pages, folds, or faces, the disclosure requirement applies only to one page, fold, or face.

Over Size Print Media: occupying at least five percent of the height of the advertisement and printed in a contrasting color. This includes printed materials larger than those designed to be individually distributed (e.g., billboards).

Each communication that would require a disclosure if distributed separately, and that is included in a package of materials, must contain the required disclosure. For example, if a mailing includes a video tape, both the mailing and the video tape must contain the required disclosures.

Amending Advertising Disclosure

When a new contributor must be disclosed or the committee's name has changed, the advertisement disclosure must be amended as follows:

Broadcast Advertisements: the advertisement must be amended within five calendar days after a new person qualifies as a disclosable contributor or a committee's name changes. A committee is considered in compliance if the amended advertisement is mailed to broadcast stations by overnight mail no later than the fifth day, and the committee requests that the advertisement be immediately replaced.

Print Media and Tangible Items: the advertisement must be amended to reflect accurate disclosure information each time an order to reproduce the item is made.

Spokesperson Disclosure

When a ballot measure committee makes an expenditure of \$5,000 or more to an individual for his or her appearance in an advertisement to support or oppose a ballot measure, the advertisement must include a statement that reads:

“(Spokesperson's name) is being paid by this campaign or its donors”

in highly visible Roman font shown continuously if the advertisement consists of printed or televised material, or spoken in a clearly audible format if the advertisement is a radio broadcast or telephone message. In addition, the committee must file the Paid Spokesperson Report, Form 511. (See Chapter 8.)

Answering Your Questions

- Q. *An elected officeholder made a \$10,000 contribution to a noncontrolled ballot measure committee. Must the officeholder's name be identified in the committee's advertisements?*
- A. No. The officeholder's name would be required in the name of the committee and the committee's advertisements if the officeholder were a major contributor of \$50,000 or more.
- Q. *A noncontrolled ballot measure committee's four highest contributors are a corporation (\$150,000), an individual (\$100,000), a state officeholder from personal funds (\$85,000) and the same state officeholder's controlled committee (\$50,000). Which two donors must be identified in the committee's advertisements?*
- A. The contributions from the state officeholder's personal funds and controlled committee funds would be cumulated, for a total of \$135,000. In this case, the two highest contributors are the corporation and the state officeholder.

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The officeholder's name must be in the name of the committee as well as in the committee's advertisements.

Authority

The following Government Code Sections and Title 2 regulations provide authority for the preceding information in this chapter:

Government Codes Sections

82015	<i>Contribution.</i>
82025	<i>Expenditure.</i>
82031	<i>Independent Expenditure.</i>
82041.5	<i>Mass Mailing.</i>
82044	<i>Payment.</i>
82047	<i>Person.</i>
84211	<i>Contents of Campaign Statement.</i>
84305	<i>Requirements for Mass Mailing.</i>
84310	<i>Identification Requirements for Telephone Calls.</i>
84501	<i>Advertisement.</i>
84503	<i>Disclosure; Advertisement For or Against Ballot Measures.</i>
84504	<i>Identification of Committee.</i>
84505	<i>Avoidance of Disclosure.</i>
84507	<i>Printed Statement or Broadcast Communication.</i>
84508	<i>Disclosure of One Funding Source on Any Advertisement.</i>
84509	<i>Amended Statements.</i>
84511	<i>Ballot Measure Ads; Paid Spokesperson Disclosure.</i>
85310	<i>Communications Identifying State Candidates.</i>
85312	<i>Communications to Members of an Organization.</i>
85500	<i>Independent Expenditures; 24-Hour Disclosure; Coordination.</i>

Title 2 Regulations

18215	<i>Contribution.</i>
18225	<i>Expenditure.</i>
18225.7	<i>Made At the Behest of.</i>
18401	<i>Required Recordkeeping for Chapter 4.</i>

18435	<i>Definition of Mass Mailing and Sender.</i>
18450.1	<i>Definitions. Advertisement Disclosure.</i>
18450.3	<i>Committee Name Identification. Advertisement Disclosure.</i>
18450.4	<i>Contents of Disclosure Statements. Advertisement Disclosure.</i>
18450.5	<i>Amended Advertising Disclosure.</i>
18450.11	<i>Spokesperson Disclosure.</i>
18531.7	<i>Payments for Communications -- Section 85312.</i>